

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIA C. MALAMON and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

*Docket No. 01-747; Submitted on the Record;
Issued November 7, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

On January 23, 1998 appellant, then a 52-year-old supervisor of customer service, filed a claim for stress, anxiety, panic disorder which she attributed to factors of her federal employment. Appellant stopped work February 13, 1998. By decision dated April 6, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. By decision dated October 18, 2000, an Office hearing representative affirmed the prior decision.

The Board has duly reviewed the case record and finds that the case is not in posture for a decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.²

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates the factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

In an undated statement, which the Office received March 27, 1998, and in her hearing testimony of October 29, 1998, appellant alleged that on December 30, 1997 she suffered emotional stress. She indicated that on that morning after having some discussions with her carriers, she proceeded to the lunch area to heat up a cup of coffee and felt a pain which originated in her back and worked its way to her chest area. Appellant attributed her emotional condition to disputes over leave, supervision, assignments, work site, overtime, being assaulted by a clerk,⁷ being given a letter of warning in place of a seven-day suspension.

Most of the incidents identified by appellant as causative factors of her claimed condition are not compensable under the Act. Specifically, appellant expressed dissatisfaction with her supervision, assignments and work site as she indicated that she was understaffed and had to come in early and stay late. Appellant indicated that she had informed the employing establishment that more help was needed and that a new supervisor, who needed to be trained, was sent. Appellant stated that the new supervisor eventually left to go to an office with less interruptions. Appellant's complaints are analogous to frustration over not being allowed to work in a particular environment and are therefore not compensable. Many of appellant's allegations of employment factors that caused or contributed to his condition also fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,⁸ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and

³ *Id.*

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁶ *Id.*

⁷ Appellant testified that she had filed a claim in this matter which the Office had accepted.

⁸ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment in dealing with the claimant.⁹ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: allegations concerning leave requests, the failure of the employing establishment to assign her a new supervisor with experience, the nature of her assignments, and disciplinary action. Appellant, however, has presented no evidence of administrative error or abuse in the performance of these actions and, therefore, they are not compensable under the Act. Appellant's contentions regarding disputes over leave and disciplinary actions relate to administrative functions of the employing establishment and, absent any showing of error or abuse, are not compensable.

Appellant also alleged that she worked overtime prior to and after the new supervisor left. Appellant indicated that she worked approximately 65 hours a week because she felt obligated because of the additional responsibilities after the new supervisor left. Overwork can be a compensable factor of employment if substantiated by the record since it relates to assigned work duties.¹⁰ Appellant's allegation that her work duties increased because she was understaffed and a new supervisor had not completed certain tasks while she was away on vacation is not substantiated.

However, the record indicates that appellant did work overtime from July 1997 to February 1998. The Board notes that the facts and circumstances of this case reveal that, although appellant was issued a disciplinary action on February 11, 1997 for failure to obtain prior approval for use of overtime, the record is devoid of any evidence regarding an express prohibition concerning her overtime work. Moreover it appears that the employing establishment derived a substantial benefit from appellant's overtime work as there was no dispute in her pay.¹¹ The Board further notes that, in developing the evidence, the Office did not request any information regarding appellant's allegations of overwork from the employing establishment. Accordingly, appellant's overtime work constitutes a compensable factor under *Cutler*.¹²

As appellant has established a compensable factor of her employment, the Office must base its decision on an analysis of the medical evidence.¹³ Since the Office found that there were

⁹ See *Richard J. Dube*, 42 ECAB 916 (1991).

¹⁰ See *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

¹¹ See *Catherine Callen*, 47 ECAB 192 (1995).

¹² See *supra* note 2.

¹³ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Margaret S. Krzycki*, *supra* note 5; *Norma L. Blank*, 43 ECAB 384 (1992).

no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded for that purpose.¹⁴

The decision of the Office of Workers' Compensation Programs dated October 18, 2000 is set aside and the case is remanded for further action consistent with this decision of the Board to be followed by an appropriate decision.

Dated, Washington, DC
November 7, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ See generally *Dodge Osborne*, 44 ECAB 869 (1993).